

Halperin

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-222804.2

DATE: May 15, 1986

MATTER OF:

Charles A. Martin & Associates--
Reconsideration

DIGEST:

1. Protest against an award of an architect-engineer (A-E) contract alleging that the awardee received an evaluation preference based on its status as a minority owned or controlled firm is untimely when filed after award because the protested preference was apparent from the Commerce Business Daily announcement of the procurement and therefore any objections to the preference should have been raised prior to the date specified in the announcement for the receipt of qualification statements of the A-E firms.
2. Where an initial protest is untimely filed with the contracting agency under GAO Bid Protest Regulations, subsequent protest to GAO is untimely and will not be considered even though it was filed within 10 working days of the agency denial of the protester's initial protest.
3. Untimely filed protest will not be considered under the "significant issue" exception to GAO's timeliness rules where the issue had been previously considered by GAO.
4. Under GAO Bid Protest Regulations, GAO considers the propriety of an award or proposed award and not, as here, general allegations that the agency is acting or will act improperly in regards to unspecified present and future procurements.

Charles A. Martin & Associates (Martin) requests reconsideration of our decision in Charles A. Martin & Associates, B-222804, Apr. 17, 1986, 86-1 C.P.D. ¶ ____, dismissing as untimely Martin's protest against a preference for minority owned and controlled architect-engineer (A-E) firms contained in the Commerce Business Daily (CBD) advertisement for A-E services for the Travis Air Force Base, California. Martin's initial protest alleged that the

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preference violated the Constitution, the Armed Services Procurement Act, the Brooks Act and the Federal Acquisition Regulation. We affirm our prior decision.

In our earlier decision, we stated that, because the protested preference was apparent from the CBD announcement, Martin was required to protest any objection it had to the preference prior to the date specified in the CBD announcement for the receipt of qualification statements of the A-E firms. R. E. Skinner & Associates, B-196084, et al., Feb. 20, 1980, 80-1 C.P.D. ¶ 145. Since Martin's first protest against the preference was not filed (with the Air Force) until after award of a contract, it was untimely. R. E. Skinner & Associates, B-196084, et al., supra. Because Martin's agency level protest was untimely filed, we dismissed as untimely Martin's subsequent protest to our Office. 4 C.F.R. § 21.2(a)(3) (1985); Auburn Timber, Inc.--Request for Reconsideration, B-221523.2, Feb. 20, 1986, 86-1 C.P.D. ¶ 182.

In its request for reconsideration, Martin argues that its initial protest was timely filed (with the Air Force) because it was filed within 10 days of the date that Martin was notified of the award. Martin contends that it did not know that it was "injured" by the preference until it learned that the Air Force intended to award the contract to another firm.

Although Martin argues that it was not "injured" by the preference until it became aware of the Air Force's intention to award a contract to another firm, the fact remains that Martin's protest constitutes an allegation of a defect in the CBD announcement and, as such, it was incumbent upon Martin to raise its objections prior to the date specified in the CBD announcement for the receipt of qualification statements of A-E firms. FACE Associates, Inc., 63 Comp. Gen. 86 (1983), 83-2 C.P.D. ¶ 643; R. E. Skinner & Associates, B-196084, et al., supra. Martin participated in the procurement knowing of the preference, but did not object to it until it learned that it had not been selected for award. This was too late. Because Martin did not file its protest with the Air Force prior to the date for receipt of qualification statements, its protest to the procuring agency was untimely. FACE Associates, Inc., 63 Comp. Gen. 86, supra. Since Martin's initial protest to the Air Force was untimely filed, we properly dismissed its subsequent protest to GAO against adverse agency action. 4 C.F.R. § 21.2(a)(3); Auburn Timber, Inc.--Request for Reconsideration, B-221523.2, supra.

Martin argues that our Bid Protest Regulations "cannot take precedence over the Constitution of the United States nor the Brooks Act." In effect, Martin is contending that the matters raised in this protest, although untimely, should be considered under the "significant issue" exception to our timeliness rules. See 4 C.F.R. § 21.2(c) (1985). However, under the "significant issue" exception, we will only consider untimely protests when the issue or issues raised are of widespread significance to the procurement community and have not been previously considered. Beech Aerospace Services, Inc., B-220078, Dec. 20, 1985, 85-2 C.P.D. ¶ 694. We construe this exception strictly and use it sparingly to prevent our timeliness rules from being considered meaningless. Beech Aerospace Services, Inc., B-220078, supra. Martin's protest does not fall within the exception because our Office has previously considered the propriety of preferences for minority owned or controlled firms. See Y.T. Huang & Associates, Inc., B-217122; B-217126, Feb. 21, 1985, 85-1 C.P.D. ¶ 220; Microtech Industries, Inc.--Reconsideration, B-206501.2, July 30, 1982, 82-2 C.P.D. ¶ 95; Delphi Industries, Inc., B-194802, Oct. 3, 1979, 79-2 C.P.D. ¶ 239.

Further, without referring to any specific procurement, Martin generally protests against all (unspecified) present and future Air Force A-E projects which include an evaluation preference for minority owned and controlled firms.

In resolving protests under our Bid Protest Regulations, 4 C.F.R. part 21 (1985), our Office only considers timely protests filed by interested parties involving specific procurement actions, i.e., whether a contract award or a proposed contract award complies with statutory, regulatory, and other legal requirements. Systems Engineering International, Inc., B-218016, Feb. 7, 1985, 85-1 C.P.D. ¶ 164. Since Martin questions the propriety of all of the Air Force's unspecified present and future A-E procurement actions containing the stated preference, an authoritative decision cannot be provided, and therefore we will not, at this time, consider the allegation. Systems Engineering International, Inc., B-218016, supra; Equipment & Supply Service Co., B-215776, Aug. 30, 1984, 84-2 C.P.D. ¶ 241.

Since Martin has not shown that our prior decision contains any errors of fact or law, it is affirmed.

for Seymour E. Hoo
Harry R. Van Cleve
General Counsel